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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 517th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 8 May 2002, at 3 p.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Conclusions and recommendations concerning the second periodic report of Uzbekistan

Third periodic report of Luxembourg (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.517/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Conclusions and recommendations concerning the second periodic report of Uzbekistan (CAT/C/53/Add.1; CAT/C/XXVIII/Concl.2)

1. At the invitation of the Chairman, Mr. Saidov (Uzbekistan) took a place at the Committee table.

2. Mr. YAKOVLEV, Country Rapporteur, read out the conclusions and recommendations of the Committee (CAT/C/XXVIII/Concl.2) on the second periodic report of Uzbekistan (CAT/C/53/Add.1).

3. Mr. SAIDOV (Uzbekistan), thanking the members of the Committee for their unfailingly careful and objective consideration of his country's periodic reports, said that an outside view of a Government's compliance with a convention could sometimes be illuminating. His Government had been given some further helpful indications as to how it might fulfil its obligations under the Convention. The conclusions and recommendations of the Committee would be given careful consideration and would be publicized widely both among the public and the various Uzbek institutions concerned. The third periodic report would be submitted on schedule and would respond to all of the Committee's recommendations.

4. Mr. Saidov (Uzbekistan) withdrew.

Third periodic report of Luxembourg (continued) (CAT/C/34/Add.14)

5. At the invitation of the Chairman, the members of the delegation of Luxembourg took places at the Committee table.

6. Mr. NICOLAY (Luxembourg) said that the document submitted by his Government and discussed with the Committee represented the combined third and fourth periodic reports of Luxembourg, as the Committee had requested. A misleading typographical error on the cover page had made it seem that only the third periodic report had been submitted.

7. Ms. DENNEWALD (Luxembourg), replying to questions asked by members of the Committee at its 514th meeting, said that the members of the Advisory Commission on Human Rights established by the Government in 2000 were all human rights specialists representing a broad spectrum of civil society and comprising both nationals and non-nationals. The Advisory Commission had thus far made two rulings, one in June 2001 regarding the protection of the personal data of individuals; and one in January 2002 regarding the draft Charter of Fundamental Rights of the European Union.

8. The General Police Inspection Department was an independent body that investigated and assessed the work of the police, at the request of judicial authorities or of the Chief of Police. One relevant case involving ill-treatment of a detainee had resulted in a criminal conviction and a disciplinary penalty, and another complaint was under investigation.

9. Concerning the application of the Geneva Convention relating to the status of refugees, fewer than 1 per cent of asylum-seekers had been granted refugee status in 1999 and 2000, because the overwhelming majority of them had come from European countries that were not in a state of war and they had not been personally persecuted by their Governments. In the following two years, however, when there had been an influx from other regions, an average of over 7 per cent of the requests for refugee status had been granted. Since asylum-seekers were prohibited from working, the State provided them with the necessary food and lodgings.

10. In the case of the massive influx during the Kosovo crisis - the asylum-seekers arriving in 1998 and 1999 had represented about 1 per cent of the total population of Luxembourg - the Government, fearing that it could not provide for so many, had exceptionally granted the new arrivals a six-month, renewable temporary work permit. A European Union draft directive on conditional access to the job market would soon be adopted, and her Government planned to incorporate it into domestic legislation as soon as possible.

11. As a result of its experience during the Kosovo crisis, which had revealed the limits of both the Geneva Convention and Luxembourg's own procedures, her Government had adopted new legislation to deal with any such recurrence: the Act of 18 March 2000 establishing a temporary protection regime, which would always be subject to a government decision and implementing regulations, amended the established asylum procedures.

12. Asylum-seekers whose requests had been denied after due administrative and judicial procedures were asked to return voluntarily to their own countries and, to facilitate their return, the Government paid the air fare and removal costs and gave a substantial amount of financial assistance. In the case of Kosovo and Montenegro, it had also helped to set up reception centres in those areas. Forced repatriation proceedings were instituted only if the rejected asylum-seeker refused to leave the country voluntarily; and it was true that, during the 24 hours before expulsion, such persons were held in detention, except children or persons with family members in Luxembourg. A Grand Ducal regulation setting up a temporary residence centre for illegal aliens was being drafted. Her Government considered that its current administrative and judicial procedures did not constitute inhuman or degrading treatment.

13. Luxembourg had ratified the Council of Europe conventions relating to the status of stateless persons and had incorporated into its legislation, without ratifying it, the 1961 United Nations Convention on the Reduction of Statelessness.

14. Mr. NICOLAY (Luxembourg) said, with reference to article 5 of the Convention, that his Government never extradited its own nationals, but could, under its revised Code of Pre-Trial Proceedings, prosecute offenders residing in its territory or extradited to it. Going further than

article 5, paragraph 1, subparagraph (c), of the Convention in protecting the victims of an act of torture, the Code gave the Luxembourg courts jurisdiction over acts of torture committed abroad against either a national or a resident of Luxembourg.

15. Referring to paragraph 27 of the report (CAT/C/34/Add.14), he explained that legislation had been adopted in 2001 revising the 1870 law that listed extraditable offences and modernizing the approach to extradition by making any offence that was punishable by more than one year's imprisonment an extraditable offence.

16. The law governing persons held in police custody, including illegal aliens, provided for their immediate access, upon arrest, to medical care and the services of a lawyer, with legal fees being covered for indigent detainees. The provisions regarding legal assistance were, however, impracticable in the case of night arrests, where the detainee had to wait at least nine hours, until morning, for access to a lawyer. Only persons caught in the act and suspected of having committed an offence punishable by imprisonment could be held in police custody. Persons undergoing identity checks did not have the right of access to a doctor or a lawyer, since they could be held for a maximum of four hours only, but the practice was to call in a doctor immediately wherever necessary. All persons in police custody had the right to notify a family member or some other person by telephone, except where precluded by the requirements of the investigation.

17. The text of article 45 of the Code of Pre-Trial Proceedings was very explicit: if persons refused to present their identification papers, or had none, they could be detained, but in practice such persons were not necessarily taken to a police station. The Act of 24 April 2000 adapting internal law to the provisions of the Convention had had a very limited impact on the matter: it had simply revised article 45 of the Code to comply with a recommendation of the Committee, as indicated in the report (para. 26).

18. Mr. NICOLAY (Luxembourg) said that it was not possible to give persons detained for an identity check access to a judge and the only control mechanism was informing the Public Prosecutor, who had to monitor the procedure and ensure that it ended after the maximum period of four hours.

19. As for solitary confinement during pre-trial detention, a judge could rule that a detainee was to be prohibited from communicating with others for a period of up to 10 days, renewable once only. There had to be special reasons for the decision and, in actual practice, it was very rarely used. The imposition of the measure implied detention of the person in an individual cell, contact being limited to that with prison guards, a doctor or a lawyer. Solitary confinement as a disciplinary measure was the same for all detainees - whether pre-trial or sentenced - and the most serious form, placement in strict solitary confinement, had to be approved by the chief administrator of the prison or detention centre.

20. Certain NGOs had been complaining for years that persons detained in solitary confinement were not given psychological assistance or monitoring but that was no longer the case. As a result of the recruitment of new psychological specialists, it had become possible to monitor individually persons placed in solitary confinement. They were usually seen twice a day, in addition to receiving an obligatory medical visit and being able to request an interview

with a member of the prison or detention centre management. Minors detained in State socio-educational centres and placed in solitary confinement were visited once a day by a psychologist or social assistant, given two hours of individual tuition per day if still of school age and visited every hour of the day by an educational assistant from the group to which the minor in question had been allocated.

21. In reply to Mr. Rasmussen's question regarding the duration of solitary confinement, he said that, in Luxembourg Central Prison, that form of punishment was avoided as far as possible as the authorities were aware of its negative effects. Duration elsewhere varied from 15 days to one month, with half of the period being suspended on the condition that another reprehensible act was not committed in the following six months. With regard to the question as to whether anyone placed in solitary confinement had ever requested compensation for suffering, the answer was in the negative.

22. Ms. DENNEWALD (Luxembourg), replying to a question on the detention of minors, said that the establishment of a special unit for minors in the disciplinary section of Luxembourg Central Prison was still the subject of internal legislative and administrative procedures and construction had consequently not yet begun. Minors held in the disciplinary block at Luxembourg Central Prison were always placed in separate quarters.

23. Mr. NICOLAY (Luxembourg), replying to Mr. Camara's question regarding the new law on incorporation into domestic legislation, explained that it did not target any special categories of crime. An act had to be qualified as a crime and to be punishable by imprisonment of at least one year under Luxembourg law. There were no special provisions concerning torture and there were no need for any as article 9 of the Convention was directly applicable in Luxembourg law.

24. Ms. DENNEWALD (Luxembourg), in reply to a question by Ms. Gaer on professional training, said that practical training courses were provided for police and other law-enforcement officers on managing situations involving aliens in general and asylum-seekers in particular. As for the training of medical personnel, doctors were made aware of the problems of torture and human rights as part of their medical studies in France, Belgium, Germany or Austria, and nurses received instruction on such matters during their medical and paramedical training as part of the nursing education course in Luxembourg.

25. Mr. NICOLAY (Luxembourg), replying to Mr. Camara's question as to whether there were any domestic legislative provisions covering article 12 of the Convention, confirmed that there were none. Unlike the situation in some of the neighbouring countries, very little use was made in Luxembourg of the power of the executive to give instructions to public prosecutors and it was for the prosecutors to decide which cases were the most serious and to act accordingly.

26. There was no particular law covering the compensation of a victim for an act of torture.

27. The Country Rapporteur had inquired about evidence obtained indirectly by torture, citing the example of a person who revealed under torture the location of a corpus delicti. The principle of the legality and reliability of the evidence obtained would rule out the evidential use of such a corpus delicti against a person who had been tortured. However, there had never been a case of that nature in Luxembourg.

28. With regard to ill-treatment, 11 cases of police violence had been investigated by the Luxembourg public prosecutors in 2000. Two had been resolved by the payment of fines for injuries, the victim having been slapped in both cases. In 2001, there had been 13 such cases investigated by the public prosecutors.

29. Following a request by the Committee for more information on measures to reduce suicides among minors, he pointed out that there had been no suicides of minors in prisons or socio-educational centres for a decade. With regard to adults, indications were provided in document 10 listed in the annex to the report but there had been no such suicides since May 2000. In answer to Mr. Mariño Menéndez's question on measures to prevent suicide, he pointed out that a report written by a group of French experts commissioned by the Ministry of Justice was listed as document 27 in the annex to the report. Document 11 also contained a brief note on the issue by the Director of the Luxembourg Central Prison.

30. Ms. DENNEWALD (Luxembourg) said that the law of 31 May 1999, designed to strengthen measures against trafficking in people and the sexual exploitation of children and to amend the Luxembourg Criminal Code accordingly, adapted Luxembourg legislation to comply with the provisions of the Joint Action adopted by the Council of Ministers of the European Union on 24 February 1997. The provisions relating to the Criminal Code had been adapted and supplemented by provisions covering incrimination for the possession of pornographic material involving or representing minors. The law was also designed to extend the competence of the Luxembourg courts to cover all sexual crimes committed abroad by Luxembourg citizens and persons resident on the territory of Luxembourg. The law had not actually been invoked to date but two cases relating to the possession of pornographic material involving minors were currently under consideration.

31. Mr. NICOLAY (Luxembourg) said that sexual violence in prison was the subject of constant attention by the Director of the Luxembourg Central Prison and the socio-educational staff. There were no statistics available as the prison population was so small. It was also not improbable that there were cases that went unreported. However, if such cases were reported and proved, the victims were offered therapy and the culprits were severely punished.

32. With regard to drug addiction in prison, the Ministry of Justice had commissioned the association "Praxis" to compile a detailed report on the measures required to deal with drug addicts in penitentiary environments. The first batch of funds required for implementing the report had been incorporated into the 2002 budget for penitentiary administration. Two specific projects had also been launched: a psychologist and a social worker had been recruited to monitor addicts and the Drug Prevention Centre - a public service unit - had set up a discussion group for detainees with drug problems. An agreement had also recently been signed between the State of Luxembourg and its Neuropsychiatric Hospital which would be taking responsibility for all psychiatric care at the Luxembourg Central Prison. The service would become operational in autumn 2002 and would undoubtedly improve the care of drug-dependent inmates.

33. In response to a question by Mr. Rasmussen on the preventive detention of minors, he pointed out that Luxembourg was one of the few countries in Europe that did not have a criminal law for minors. Instead of criminal sentences, the law on the protection of young people

provided for monitoring, education and protection measures ranging from reprimands to placement in State correctional centres. The measures applied to delinquent minors, problem minors and minors rejected by their families. As there was no criminal provision for minors, no pre-trial detention was possible, with one exception: persons over 16 years of age who had committed a serious crime regarding which a judge specializing in crimes committed by minors believed that any measures he could impose would be inadequate. In such a case the delinquent could be referred to the ordinary courts, subjected to pre-trial detention and sentenced to a term of imprisonment under the same conditions as adults but imprisoned in a section for young adults.

The public part of the meeting rose at 4.20 p.m.